IN THE DISTRICT, FIFTH JUDICIAL DISTRICT (ORIGINAL SIGNED AUGUST 30, 2000)
STATE OF WYOMING, COUNTY OF WASHAKIE

IN RE: THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE BIG HORN RIVER SYSTEM AND ALL OTHER SOURCES, STATE OF WYOMING.	)))))	Civil No. 77-4493/ 86-0012

AMENDED JUDGMENT AND DECREE

This Matter, came before the Court on objection by the Parties to the report of the Honorable Ramsey Kropf, Special Master, dated 31 December, 1998. The Court having reviewed said report, having read and heard the parties exceptions thereto, and having considered the July 30, 1999 Joint Motion for Correction and Amendment to Individual Walton Reports, the January 18, 2000 Supplement to the Joint Motion, and the July 14, 2000 Stipulation and Joint Motion, and being fully advised in the premises; the Court replaces the March 1, 2000 Judgment and Decree with this Amended Judgment and Decree, and finds as follows:

BACKGROUND

On February 24, 1988 the Wyoming Supreme Court entered its Decree, which ordered in part:

"On remand, appellants must be awarded a reserved water right with an 1868 priority date for the PIA [practicably irrigable acreage] they can show were irrigated by their Indian predecessors or who put under irrigation within a reasonable time thereafter." In Re Rights To Use Water in Big Horn River, 753 P.2d 76, 113-114 (Wyo. 1988). [Big Horn I].

The appellants referred to were successors to Indian allottees making a claim for a treaty based priority date of 1868 for their water rights. Such rights are called "Walton" rights based on the Wyoming Supreme Court's reliance upon Colville v. Confederated Tribes v. Walton, 647 F.2d 42, 51 (9th Cir. 1981) ("Colville").

Thereafter, the Wyoming Supreme Court elaborated upon claims by the successors to Indian allottees, stating :

[A]ll parties who have appeared in the case [General Adjudication of the Big Horn River] at least to the extent of filing an answer and have not subsequently dismissed, are entitled to the application of any rule that has become the law of the case, no matter how

that rule has been established and without regard to whether those parties did or did not participate in the proceedings in which it was established.

In re Big Horn River System, 803 P.2d 61, 69 (Wyo. 1990) ("Big Horn II"). Following Big Horn II, this Court entered its Order Adopting Walton Procedures on January 21, 1992 ("Walton Procedures"). Under the Walton procedures, any other persons or entities believing that they were entitled to a Walton water right were required to file a claim with the District Court by September 28, 1992. During the same time period for filing Walton claims, this Court dealt with the remand Walton rights. On May 4, 1992, Special Master, Terrance Dolan provided his Report and Recommendation to the Court regarding remand Walton claims from Big Horn II. This Court entered a Decree regarding the remand Walton rights on July 30, 1992 ("July 1992 Decree"). There were 419 Walton right claims filed with the District Court on September 28, 1999, and pursuant to the Walton Procedures, objections to the Walton right claims were filed, most by the Eastern Shoshone Tribe, the Northern Arapahoe Tribe and the United States. After the Supreme Court's October 26, 1993 Order Dismissing Appeal, this Court directed Special Master to begin hearings on the 419 Walton right claims.

Subsequently, this Court granted summary judgment and dismissed 155 of the so-called "super-Walton claims" and the Wyoming Supreme Court affirmed that decision on July 13, 1995. See In re Big Horn River, 899 P.2d 848 (Wyo. 1995) ("Big Horn V"). The "super-Walton" claimants contended that their lands, acquired by various federal homestead acts, should also have the 1868 priority date. Based on the Supreme Court's affirmation, 264 pending Walton right claims remained. Forty-three (43) claims were either withdrawn or dismissed by the claimants leaving 221 claims.

The Special Master scheduled a series of hearings on the Walton right claims allowing each Walton right claimant to come forward to present evidence and to resolve the various objections to each claim. Certain legal issues applied to each of the Walton right claims "globally" and were reserved from the factual hearings for a single briefing, by agreement between the parties, and approval by the Special Master and the Court. Those issues were termed "global Walton issues" and dealt with several points, including administration and appurtenancy of a Walton right. In addition, the Special Master held a week long hearing on factual matters regarding global Walton issues of administration and appurtenancy, which also affected all Walton right claims. The Master filed her Report and Recommendation to the Court on January 27, 1999, and subsequently the parties filed their exceptions to the Special Master's Report and Recommendation. All parties were allowed to brief the issues, the District Court heard the parties' arguments and considered the briefs prior to issuing this Decree.

DISCUSSION

Global Walton Legal Issues

The "global Walton legal issues" were identified in the Special Master's Report and Recommendation. Later, the factual determinations will be discussed as they relate to these "global issues".

Must Walton right claimants prove that they "appeared in the case, at least to the extent of filing an answer" as set forth in Big Horn II?

Must Walton right claimants prove they submitted evidence in the 1983 trial?

Were the elements set forth in this Court's July 1992 Decree appropriate for granting a Walton right?

How should water duties be determined for perfected Walton rights?

Should state water permits, which overlap a perfected Walton right, be cancelled?

How will a perfected Walton right be administered?

Are perfected Walton rights appurtenant to the claimants' property?

Should a Walton right be granted when the Walton Right Claim is for acreage which overlaps property with a decreed federal reserved right?

The above issues provide the outline for this Court's decree, and each is discussed below.

A. Answer or Appearance.

It is this Court's opinion that a Walton Right claimant must have answered or appeared in this case in order to present evidence and perfect a Walton right claim. The Special Master recognized that many of the Walton right claimants could not and did not provide evidence that they either answered or appeared in this general stream adjudication before June of 1984. This Court held previously in its September 5, 1995 Order that Walton right claimant was deemed to have "answered" so long as the claimant filed a Walton right claim by September 28, 1992. Such filing satisfies the requirement of Big Horn II to "answer or otherwise appear." Therefore, the Court adopts the Special Master's recommendation on this issue and makes it part of this decree.

B. Submitted Evidence.

The Special Master admitted new evidence during the Walton right hearings for the purpose of supplementing or clarifying the existing record. The admittance of new evidence was done pursuant to this Court's order of July 30, 1992. That Order previously held that Special Master Dolan did not err when he allowed new evidence for the purpose of supplementing or clarifying the record. While the United States and the Tribes oppose this position, the acceptance of new evidence on the Walton rights by the

Special Master was not inappropriate. The Special Master's recommendation on this issue is adopted for this decree.

C. Elements Required To Establish A Walton Right

Pursuant to the Wyoming Supreme Court's reliance upon Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1981) ("Colville") for its decisions in Big Horn I and Big Horn II, this Court, in its July 1992 Order, set forth the following necessary elements to prove a Walton right:

A Walton right claimant must prove the claimed property is either owned by an Indian allottee or was conveyed from an Indian allottee.

A Walton claimant must show that the claimed water was put to beneficial use by an Indian predecessor(s) or within a reasonable time after this property passed out of Indian allottee ownership.

A Walton claimant must show that the claimed water right has been continuously used since the time of initial beneficial use.

A Walton claimant must show that the claimed property subject to the claim is practicably irrigable.

In addition, the following issues arose in determining the elements to establish a Walton right:

Tacking Claims.

There were several Walton right claimants who argued that they should be awarded a Walton right even though they could not prove that the water was put to use by the allottee or by the allottee's successor within a reasonable time. These claimants attempted to "tack" their claims to the diligence of a federal irrigation project, for which state water rights applications were filed in 1905. The federal project began to deliver water to these "Tacking Claimants" by the mid-1930s – 1940s. At the core of the "Tacking Claimants'" argument is the notion that, if "relation back" can give the claimants the 1905 priority date, then the doctrine should be expanded and relate back to the time the property left Indian ownership, thus giving the property an 1868 reservation priority date.

This argument flies in the face of certain factual evidence that other successors to allottees on nearby lands developed irrigation within a reasonable time after the property passed out of allotment status. Additionally, and most importantly, the purpose of the General Allotment Act, 25 U.S.C. § 331, would be subverted by this "relation back" argument. The General Allotment Act intended to give Indians a valuable property right, which included a water right, in effort to "encourage Indians to become self-supporting citizens by making them landowners." See Colville, 647 F.2d at 49. Only in special

circumstances, the Colville Court (and other federal and state decisions) allowed a treaty based priority dated to attach to allotted land. Colville required the allottee or the allottee's successor to beneficially use the water within a reasonable time after they obtained the land. The Colville Court looked at Mr. Walton's diligence in beneficially applying water as the determinative factor. In particular, the Colville Court examined non-use by a non-Indian successor to an allottee, stating:

[T]he Indian allottee does not lose by non-use the right to a share of reserved water. This characteristic is not applicable to the right acquired by a non-Indian purchaser. The non-Indian successor acquires a right to water being appropriated by the Indian allottee at the time title passes. The non-Indian also acquires a right, with a date of reservation priority date, to water that he or she appropriates with reasonable diligence after the passage of title. If the full measure of the Indian's reserved water right is not acquired by this means and maintained by continuous use, it is lost to the non-Indian successor. Colville, 647 F.2d at 51.

This Court did not previously nor will it now subscribe to the "Tacking Claimants" arguments. The Court will not award an 1868 priority date to property where the water was not developed for 10-20 or more years after the property left allotment status. Therefore, the Court will not deviate from its original position that "Tacking Claimants" will not be awarded an 1868 priority date.

Other Reasonable Time Issues.

In addition, the Special Master made three related findings regarding reasonable time, and recommended the following:

The calculation of reasonable time begins once the claimed acreage transfers out of allotment status upon title passing to the first non-Indian.
A Walton right claimant's property transfer out of allotment status relates back to the death of the allottee, rather than to the date of probate.
A Walton right should not be granted to a claimant where the irrigated land is still owned in trust by the United States.

This Court adopts those recommendations for this decree.

D. Determination of Water Duties.

The Special Master recommended that the water duties for similarly situated federal reserved rights is the correct determinant for Walton right water duties, because state based water rights are statutorily proscribed to be 1 cfs per 70 acres. The Tribes argued that state law should similarly limit any perfected Walton rights. However, based on the concept that Walton rights are similarly situated to federal reserved rights, the recommendation to use acre-feet measurement for water duties for the federal reserved rights which are measured in acre feet, is accepted and made part of this decree.

E. Overlapping State Water Rights and Walton Awards.

Some Walton claimant property has a state water right also attached thereto. The parties agreed, the Special Master recommended and this Court accepts the recommendation that if a Walton right is perfected, the overlapping state based right be canceled. Further, to the extent a state water right covers acreage in excess of the perfected Walton right, then the excess state water right should remain in full force and effect.

F. Administration of Perfected Walton Rights.

1. Background.

Administration of a perfected Walton right has been one of the most difficult issues confronting the parties, the Special Master and this Court. As Justice Thomas said in Big Horn III, 835 P.2d 238 (Wyo. 1992), "I am persuaded that the real battle in this case is now over sovereignty, not over water."

At this juncture, a brief history is in order about the issue of administration. In Big Horn I, 753 P.2d at 115, the Wyoming Supreme Court recognized that the role of the State Engineer was not to apply state law, but rather to enforce the federal reserved rights as decreed under the principals of federal law, as is stated below.

Incidental monitoring of Indian use to this end has carelessly been termed 'administration' of Indian water by the state engineer. Should the state engineer find that it is the Tribes who are violating the decree, it is clear that he must then turn to the courts for enforcement of the decree against the United States and the Tribes and that he cannot simply close the headgates. Thus it is readily apparent that the provisions authorizing the state engineer to monitor reserved water rights contemplate neither the application of state law nor the authority to deprive the Tribes of water without assistance of the courts in a suit for administration of the decree."

The Special Master held evidentiary hearings on the issue of administration.
The Special Master provided the following summary of the testimony:

The Tribal Water Engineer is capable of administering the Tribal reserved rights.

State water rights predominate over federal reserved rights as irrigated acreage in the Wind River Basin.

Both the State and the Tribes regulate under a system of prior appropriation.

There exists significant distrust between the Tribes and the State about administration.

There is a need to provide timely regulatory decisions for water users.

The de facto administrative system is a joint system, whereby the Tribal Water Engineer regulates at the Tribal headgates and the State regulates on the Wind River System.

Against this backdrop, we now turn to the argument of the parties.

2. Arguments of the Parties.

The arguments of the parties on this issue of administration can be succinctly stated as follows:

a. The State and many Walton right claimants assert that the State is the proper administrative agency to administer the perfected Walton rights.

b. The Tribes and the United States argue that the sovereign status of the Tribe controls, and Walton rights are subject to tribal administration because such perfected Walton rights are within Indian country and federal law dictates such a result.

3. Evidentiary Overview.

This Court has reviewed the transcript in this matter.

a. During the course of the hearings, the Special Master heard from several witnesses who support the position of the State to be the agency which administers Walton Rights. It also appears from the evidence that many of the non-Indian claimants oppose Tribal administration of water rights.

The following testimony is noteworthy:

Lyle Klingaman testified that he did not feel he is fairly treated by the Tribe and would not feel comfortable if the Tribal Court is the last resort for presentation of appeals. See Transcript, Vol. V, June 13, 1998, pp. 218-241.
Francis Fox testified "I made a request on the 7th for delivery on the 9th...By the 7th there was quite a lot of water wasting down the system...I did get some water on the 30th and 31st, I think but it didn't stay." See Transcript, Vol. V, June 13, 1998, pp. 249-250.
Ron Lucas testified "Our deeded property was shut off of water completely...It was kind of ironic because I could see water wasting at the bottom through the laterals and we were shut off. See Transcript, Vol. V, June 13, 1998, p. 265.
Lloyd Dechart, for Midvale Irrigation District, testified "And the District cannot have its water administered from the river by committee, because by the time the committee decided, the damage is done, in a dry year as the water gets by Diversion Dam there's no way to capture it and no water to replace it." See Transcript, Vol. V, June 13, 1998, p. 327.
Maurice Allen, a pro se Walton right claimant testified "I have been involved with this, I guess you'd say, litigation since about 1980 off and on...and having association with the

Tribes and so forth in irrigation...I hesitate in wanting them to administer my water." See Transcript, Vol. V, June 13, 1998, p. 335.

b. During the hearing, the Tribes advanced two factual theories related to Tribal administration. First, the Tribal Water Engineer is quite capable to administer perfected Walton rights. Second, the Tribes and United States argued that because the reservation is so dominated by Tribal lands it would be appropriate for the Tribes to administer all perfected Walton rights on the reservation.

Relative to the Tribe's position that they are capable of administering perfected Walton rights are the following references from the evidence.

According to Dr. Woldezion Mesghinna, Consulting Engineer, Natural Resources Consulting, the Tribes are capable of administering Walton rights. Transcript, Vol. I, June 9, 1998, p. 72.

Douglas Oellermann, Senior Engineer, Natural Resources Consulting Engineers testified "The State Engineer's Office and the Tribal Water Engineer's Office have each been administering their respective water rights on the reservation. And when problems arise on conflicts between two different water right holders, the offices have typically worked together on the ground to resolve those differences." Transcript, Vol. II, June 10, 1998, p. 33.

4. Legal Issues of Administration.

Before this Court can accept, reject or modify the Special Master's Report and Recommendation, it has a duty to examine the current federal case law. Most significant in that area is the case of Montana v. United States, 450 U.S. 544 (1981) ("Montana"), followed recently in State of Montana v. E.P.A., 137 F.3d 1135 (9th Cir. 1998)("EPA"). The Montana Court examined a challenge to the Crow Tribe's authority to regulate the on-reservation hunting and fishing activities of non-Indians. The Court upheld tribal civil jurisdiction with regard to hunting or fishing on land owned by the Tribe or held in trust. Montana held the inherent sovereign powers of an Indian tribe do not extend to activities of non-Indians on non-Indian lands. 450 at 565. The following two exceptions were outlined in Montana which do allow Tribal authority over non-Indians owning fee lands located within the reservation:

a. If the non-members enter into a consensual relationship with a tribe, or

b. If the conduct to be regulated "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." See Montana, 450 U.S. at 565, 566.

Ultimately, Montana found that neither of the exceptions applied in that case, which would justify tribal regulation of non-Indian hunters and fishermen on non-Indian

fee land. So also in Strate v. A-1 Contractors, 520 U.S. 438 (1997) the United States Supreme Court reaffirmed the validity of the Montana rule and held there must be a nexus between the regulated activity and the tribal self-governance in order for the second exception in Montana to apply. Most specifically, the Ninth Circuit looked to Montana's "tribal interest test" in the recent EPA case. There, the Court reviewed the "treatment as a state" status accorded a tribe by a federal agency under the Clean Water Act, 33 U.S.C. 1377 (e). EPA held that the tribe's interest in its federal reserved water rights and water quality standards provided the sufficient nexus under Montana's second exception, to allow tribal jurisdiction to promulgate regulations over non-Indian water on non-Indian fee land within a reservation.

5. Definitions.

At some point in this water litigation, those responsible for on-the-ground administration and regulation will be required to interpret this, and other decrees to determine their responsibilities. Towards that end, the Court would like to provide some definitions which may be helpful.

"Tribal headgate" — A headgate which turns water onto a particular parcel of land owned by a Tribal member, a Tribe or to land held in trust by the U.S. for the benefit of the Tribe(s).

"Administration" — The issuance of permits, cancellation of permits, changes to water rights, enforcement, accounting, monitoring and the regulation of water.

"Regulation" — The measurement of water, and adjustment of headgates insuring the accurate delivery of the proper quantity of water to irrigators in accordance with the established priority dates.

"Monitoring" — The on-the-ground measurement and observance of water usage.

While the above definitions are included with the intent to provide clarity and help to on-the-ground decision makers, the Court finds it necessary to limit the use of the above definitions. Within the ambit of "administration," the topics of abandonment, forfeiture, cancellation, change of point of use, change of point of diversion, change of use and similar administrative issues with regard to Walton rights are not before this Court at this time. Therefore, the use of the above definitions is not be construed as giving the State or the Tribes power to declare such administrative authority over Walton rights, whether such Walton rights are held by non-Indians, Tribal members, the Tribe, or the United States in Trust. Such matters are to be left to a later date, when a factual situation ripens into a justiciable controversy.

6. Recommendations and Conclusions.

The Special Master found the current system of administration to be a "dual system." In reviewing the evidence, it is more accurate to describe the existing administrative system

as a "modified joint system" of administration. While the Tribes administer federal reserved rights at tribal headgates, the State has primary administrative responsibility over state water rights and monitors Tribal headgates to ensure that federal reserved rights are delivered as decreed. (The State's role in relation to the federal reserved rights was described in Big Horn I.)

The evidence adduced at the hearing demonstrated that the State has not turned any tribal headgates in the monitoring of federal reserved rights. However, there is some evidence that the Tribes may have been less than diligent in their duties in administering federal reserved rights

John Washakie, as Deputy Tribal Water Engineer, did not follow the directives of the Tribal Water Engineer. See Transcript Vol. 3, June 11, 1998, at page 217-219.
See the above references by Francis Fox and Ron Lucas.

The evidence presented did not support the Tribes' theory that the reservation was so dominated by Tribal lands that it would be appropriate for the Tribes to administer all perfected rights on the reservation. The evidence did indicate that Tribal administration at the point of Tribal headgates on the Big Horn River system is modest in comparison to the State's overall authority.

The Special Master's recommendation that there is "dual administrative system" at work conflicts with the evidence that there are a greater number of state water rights as opposed to federal reserved rights in the Wind River Basin. It is more accurate to find that the de facto administrative system is within the province of the State Engineer's authority as dictated in Big Horn I, pages 114-115. Big Horn I states that the Tribes are required "first to turn to the state engineer to exercise his authority over the state users to protect their reserved water rights before they seek court assistance to enforce their rights." Big Horn I, 753 P.2d at 115.

Therefore, the Court holds that the Special Master's finding of a "dual administrative system" was clearly erroneous, and pursuant to Rule 53, W.R.C.P., this decree finds that the State Engineer has the authority to enforce the Big Horn I decree. However, as Big Horn I limited the State's authority, so does this Court, by the same mandate of that opinion.

The Special Master also reported that non-Indian Walton right holders do not have a consensual relationship with the Tribes by the mere fact that they own lands which were formerly allotted to Indian Tribes. This Court agrees with the Special Master that the first exception under Montana was not met. She further determined that State regulation of non-Indian Walton rights used on fee lands does not threaten or have "some direct effect on the political integrity, economic security or the health or welfare of the Tribes" under Montana's second exception. The Special Master arrived at that conclusion based on evidence that both the Tribes and the State use the prior appropriation doctrine. Therefore, both the Tribes and the State are bound by the same standard, and both would use priority dates and water duties when administering a Walton right. It is this Court's

determination that the Special Master's report is correct, and the Tribes cannot administer Walton rights on fee land owned by non-Indians. Additionally, this Court agrees with the Special Master report that the State's jurisdiction to administer Walton rights is not extended to land owned by the Tribes, a tribal member, or to land owned in trust by the United States for the Tribes. This determination follows from the Montana analysis.

This Court is also aware that the Tribes adopted a Tribal Water Code. While the Special Master's Report did not conclude that it would be appropriate to have Tribal Administration of all perfected Walton rights under the Tribal Water Code, it was appropriate for the Special Master, and for this Court to consider the Tribal Water Code as a vehicle for administration of Walton federal reserved rights.

G. Appurtenancy of Perfected Walton Rights.

The Special Master reported that perfected Walton rights be appurtenant to the land where the water is beneficially used. This conclusion was pursuant to the holdings in Colville which found Walton rights existed when an allottee passed fee title to another based on an "appurtenant right to share in reserved waters" of the Tribe. See Colville, 647 F.2d at 50. In addition, the Special Master relied on language of the Wyoming Supreme Court in Big Horn V, 899 P.2d at 855, which recognized the necessary appurtenant nature of Walton rights. This Court finds that this determination of appurtenancy is correct, and adopts the Special Master's finding and conclusion for this decree. The Special Master made findings about the State's advice to the State Farm Loan Board, however, those findings are not necessary to the determination of the appurtenancy issue and are not made part of this decree.

H. Overlapping Walton Rights with Federal Reserved Rights.

The Special Master reported that if a Walton claimant met all of the necessary criteria, a Walton right should be granted regardless of the existence of an overlapping federal reserved right. The award of a Walton right does not diminish the federal reserved right in totality but is in addition to the total federal reserved rights when there is not an underlying federal reserved right on that parcel. Therefore, Walton claimants that meet the required elements and overlap a federal reserved right may be awarded a Walton right. The federal reserved right will simply have the features of the Walton right on that parcel. There can be only one water right, be it a Walton right or a federal reserved right. The stipulated water duty for each Walton right so granted shall apply.

II. Conclusion.

Pursuant to Rule 53(e)(2) "The court, after hearing, may adopt a report, or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions."

Based upon the foregoing, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Each of the 221 active Walton right claimants timely filed a claim before the cutoff date of September 28, 1992, pursuant to Walton Procedures.

2. In addition to the initial service by mail and publication, at the onset of this litigation, the additional notice and service publication required by the Walton procedures satisfied the statute authorizing this general stream adjudication and the requirements due process.

The Special Master appropriately accepted new evidence in support of the Walton right claimant's position.

All of the 221 Walton claimants, except for Claim Nos. 281 and 282, were able to prove by a preponderance of the evidence that they acquired their property from an Indian allottee.

All Walton claimants, with the exception of the fourteen tacking claimants, were able to show that the claimed water was put to beneficial use by the Indian predecessor(s) or within a reasonable time after the property passed out of Indian allottee ownership. (Those fourteen (14) tacking claimants are hereby identified as follows: WRC Nos. 243, 244, 262, 286, 287, 288, 291, 292, 293, 351, 324, 371, 375, and 379.)

6. The Tacking Claimants' property passed out of allotment status in the early 1900s-1920s. The fourteen Tacking Claimants proved that the irrigation system built by the federal government began delivering water to their property in the late 1930s - 1940s. Therefore, the Tacking Claimants could not show that water was put to beneficial use within a reasonable time after the property passed out of Indian allottee ownership.

7. Other claimants neighboring the Tacking Claimants proved that water was beneficially used on their property within a reasonable time. (Walton Right Claim Nos. 277, 278, 279, 298, 299 and 322.) See Tribes Walton Exhibit Photo No. 71, 10 and Phifer Exhibit No. 6.

The Tacking Claimants can not rely upon the diligence of the United States in constructing water conveyances to their property. They may, however rely upon the diligence of the United States under its state permit to provide the Tacking Claimants with a priority date of 1905, which in itself is a valuable right.

For those Walton rights claims where the property passed out of allotment status to a non-Indian, and then back into Indian ownership at a later date, the date of first transfer from an Indian allottee should be the controlling date for determining reasonable time.

For one claimant, WRC No. 244, the United States patented land to the heirs of an allottee after his death. The allottee's probate proceeding was completed 16 years later. The property was not irrigated until after the probate was completed. The date of transfer out of allottee ownership is determined by relation back to the date of death (patent date), not to the date of probate.

The United States continues to own some percentage of property in Trust for the Tribes in two claims, Nos. 281 and 282.

12. All of the active Walton claimants were able to prove continuous use through current irrigation and by virtue of un-cancelled state permits or certificates of adjudication. Therefore, the Special Master correctly presumed the lands of the Walton right claimants are practicably irrigable.

13. For each active Walton claim, the parties were able to stipulate to a water duty (measured in acre-feet), which mirrored the water duty for similarly located federal reserved rights.

For any Walton claim where a State permit covers the same parcel and is overlapped by the Walton right claim, the state should cancel the overlapping state right but preserve any portion of an adjudicated state permit or certificate for any acres in excess of the Walton right.

The Office of the Tribal Water Engineer is capable of administering certain water rights. Such rights would include, federal reserved water rights and those Walton rights on land owned by the Eastern Shoshone and Northern Arapaho Tribes, and Tribal members, as well as water rights on land owned by the United States and held in trust for the Tribes. This administrative duty commences at the point of a Tribal headgate.

The State Engineer's office is the administrative agency responsible to administer Walton Rights on property owned in fee by non-Indians, in addition to other responsibilities proscribed by State law.

The Tribal Water Engineer operates pursuant to the Tribal Water Code which provides standards for the Tribes in their administrative capacity.

The irrigated land on the Wind River Reservation is a checkerboard pattern of land ownership comprised of state water users and federal reserved right users.

State Water users predominate the beneficial use of water in the Big Horn River Basin.

The State and Tribal Water Engineers both administer water rights under the doctrine of prior appropriation.

Significant distrust exists between the irrigators, Tribes and the State over in administration. However, The State Engineer's office and the Tribal Water Engineer's

office have been able to work effectively together to resolve many administrative conflicts.

In the arid country of the Big Horn Basin, it is imperative that administrative decision-making occur very quickly because delayed decision-making can cause significant economic damage.

The current system of administration on the Wind River is a "modified joint system," where the State administers the main stem of the River but does not regulate any Tribal headgates. The Tribes administer at the point of Tribal headgates.

The majority of the Walton claimants were non-Indian fee owners whose property was historically transferred out of allotment. Some Walton claims were sought by the Tribes or Tribal Members.

Twelve Walton right claims are on lands previously awarded a federal reserved right under Big Horn I. (See WRC Nos. 9, 58, 140, 256, 275, 276, 280, 281, 282, 313, 314, and 316.) The total acreage for those claims is approximately 1/4 of 1% of the total federal reserved right granted to the United States and Tribes under Big Horn I.

The Special Master did not hear evidence upon the issue of change of place of use for a perfected Walton right, and this issue is not properly before the Court.

The Court adopts the factual corrections to individual Walton rights in the July 30, 1999 Joint Motion for Correction and Amendment to Individual Walton Reports, the January 18, 2000 Supplement to the Joint Motion, and in paragraph 7 of the Stipulation and Joint Motion filed July 14, 2000. The Special Master's office shall add each of the corrected maps, and other information to each specific file.

Nothing in these recommended Findings of Fact should be construed as altering in any respect the previous law of the case for this matter.

CONCLUSIONS OF LAW

The following Conclusions of Law are made based on the discussion of the facts and law above.

1. All parties who have appeared in the case, at least to the extent of filing an answer, and who have not been subsequently dismissed, are entitled to the application of any rule that has become the law of the case.

2. All of the active Walton right claimants who filed a claim by September 28, 1992, pursuant to the Walton procedures, are deemed to have filed an answer and appeared for the purpose of determining whether such claimant could perfect a Walton right.

3. Service and the filing of claims under the Walton procedures adequately provide the Court with jurisdiction.

4. No prejudice resulted to any party from the admission of additional Walton right evidence and reliance on testimony which supplements the 1983 record.

5. The following elements are required to perfect a Walton right:

A Walton claimant must prove the property claimed was either owned by an Indian allottee or was conveyed from an Indian allottee.

A Walton claimant must show that the claimed water was put to beneficial use by the Indian's predecessor(s) or within a reasonable time after the property passed out of Indian allottee ownership.

A Walton claimant must show that the claimed water right has been maintained by continuous use since the time of initial beneficial use; and

A Walton claimant must show that the property subject to the claim is practicably irrigable.

6. "Tacking Claimants" seeking a Walton Right may not rely on the diligence of the United States in developing a federal irrigation project to "tack" or "piggy-back" to a federal reserved right priority date of 1868. They may, however, benefit from the federal project's state permit priority date of 1905.

7. For determining a Walton right, the calculation of reasonable time begins when the allotted property first passes out of allotment status, not when title is transferred from the most recent Indian owner.

8. For determining a Walton right, the calculation of reasonable time relates back to the death of an allottee, not from the date when probate was completed.

9. A Walton right cannot be granted to a claimant whose land is being held by the United States in trust for the Tribes.

10. The existence of current irrigation is proof that the claimed acreage is practicably irrigable.

11. Water duties for Walton rights should be determined on an acre-feet basis in similar manner to the federal reserved rights for the United States and Tribes.

12. The State should cancel any or all portions of a state permit which overlap a perfected Walton right, excepting therefrom any portion of an adjudicated state permit or certificate for any acres in excess of the Walton right claim.

13. Both the State and the Tribes must administer reservation water by using the date of priority under the prior appropriation doctrine.

14. The State Engineer's Office is the proper agency to administer Big Horn Basin water rights, including perfected Walton rights on property owned by non-Indians.

15. From the point of Tribal headgate, the Tribal Water Engineer's Office is the proper agency to administer water on lands held in trust by the United States and perfected Walton rights on lands owned by Tribal members or the Tribe.

16. The Tribes must first turn to the State Engineer to exercise his authority over the state users to protect federal reserved water rights before they seek Court assistance to enforce their rights.

17. The State Engineer's Office must turn to the Court for enforcement if it finds the Tribes are violating the decree.

18. Walton rights are appurtenant to the land where the water is beneficially used.

All Walton rights are based on an underlying federal reserved right. For any perfected Walton right parcel that overlaps a previously granted a federal reserved right, that federal reserve right acreage now assumes the features of a Walton right.

20. For any parcel granted a Walton right which does not overlay a federal reserved right, the Walton Right is in addition to the Tribes' federal reserved right granted in Big Horn I

In the interest of finality, the federal reserved right granted in Big Horn I is not diminished by any perfected Walton right.

Claimants who use water from a federal irrigation project are subject to those federal statutes, rules and regulations governing the administration of the project and nothing in this Order shall be construed to deprive any such claimant of any right granted, or relieve him or her of any responsibility that is imposed, by federal statutes, rules, regulations or amendments thereto, governing the administration of the project.

The Court awards the claimants listed on the Walton Tabulation (Exhibit A) federal reserved Walton water rights to divert water, or to have water diverted in the amounts set forth therein, from the streams set forth therein, and for the acreage described therein, with a priority date of July 3, 1868. Exhibit A includes the claims previously awarded in this Court's July 30, 1992 Judgment and Decree as amended by the November 6, 1992 Order Partially Amending the Judgment and Decree of July 30, 1992. The March 1, 2000 Judgment and Decree as amended by this Amended Judgment and Decree, and the July 30, 1992 Judgment and Decree as amended by the November 6, 1992 Order Partially Amending the Judgment and Decree of July 30, 1992 constitute the full and

final determination of all presently filed claims and issues relating to Walton water rights in this Adjudication.

All claims or portions thereof which are listed on Exhibit A as "dismissed" or "denied" are hereby finally denied. For convenience, the Court has listed those claims denied by the Supreme Court in Big Horn V, 899 P.2d 848 (Wyo. 1995). Inclusion of the Big Horn V claims does not create any new appeal right for those claims.

Pursuant to W.R.C.P. 54(b), the Court finds no just reason to delay entering the final judgment on the claims decided herein and the claims determined under this Court's July 30, 1992 Judgment and Decree as amended by the November 6, 1992 Order Partially Amending the Judgment and Decree of July 30, 1992 and THEREFORE ORDERS THE SAME.

The United States' March 14, 2000 Motion to Alter or Amend the March 1, 2000 Judgment and Decree has been resolved by stipulation of the parties and by the entry of certain findings of fact and conclusions of law herein, and therefore is denied.

The Eastern Shoshone and Northern Arapaho Tribes' Objections to Decree Tabulation for Walton Claims filed April 28, 2000 has been resolved by stipulation of the parties and by the entry of certain findings of fact and conclusions of law herein, and therefore is denied.

Nothing in these Findings of Fact and Conclusions of Law should be construed as altering in any respect the previous law of the case.

Based upon the above Findings of Fact and Conclusions of Law, together with the Joint Motion for Correction and Amendments to Individual Walton Reports (filed July 30, 1999) and the Supplement to the Joint Motion (filed January 18, 2000), this Court holds that all factual matters reported and recommended by the Special Master for individual Walton Right Claims are accepted except where the Court has incorporated its changes and the amendments and corrections agreed upon by the parties. The Parties have agreed upon a tabulation of claims in the Stipulation and Joint Motion filed July 14, 2000, containing the claim number, claimant's name, summary of awarded acreage (described by quarter-quarter), and the source and amount of water awarded. This tabulation, attached as Exhibit A hereto, reflects all changes incorporated by the Court and those amendments and corrections agreed upon by the parties.

The Court also attaches a redlined copy of the Amended Judgment and Decree as Exhibit B, so that all parties and counsel can see where changes have been made to the March 1, 2000 Judgment and Decree.

Pursuant to W.R.C.P. 54(b) the Court finds that there is no just reason for delay of entering the final judgment on the claims decided herein and THEREFORE ORDERS THE SAME.

DATED this _____ day of August, 2000.

Original signed on August 30, 2000.

_____

Gary P. Hartman

DISTRICT JUDGE

I hereby certify that on this ___ day of _____, 2000, true copies of the foregoing Judgment and Decree were sent by U.S. mail to the pro se claimant(s), attorneys for the claimants, the State of Wyoming, the Tribes and the United States of America, and all those on the Court-approved Mailing List.

_____

Gayla D. Mead, Administrative Assistant